

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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RAHEEM DAVIS,

Plaintiff, :

REPORT & RECOMMENDATION

-against-

07 Civ. 6043 (LAP) (MHD)

P.O. STEVEN VENTIMIGLIA and
8 JOHN DOE OFFICERS,

Defendants. :

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TO THE HONORABLE LORETTA A. PRESKA, U.S.D.J.:

Pro se plaintiff Raheem Davis has moved for entry of a default judgment and for summary judgment. (Dkt. #34). We recommend that both requests be denied.

The default that plaintiff seeks is apparently based on his mistaken belief that the court has approved his filing of a second amended complaint, which would add four new defendants to this case. For reasons noted in our December 29, 2008 Memorandum and Order, we have in fact denied plaintiff's request for leave to amend. Moreover, we note that in any event there is no indication that plaintiff has served summonses and copies of the purported amended pleading on the proposed new defendants. In short, there is no basis for entering a default against anyone.

As for the summary judgment request, which is apparently

sought against the one current defendant -- Police Officer Steven Ventimiglia -- this application is premature, since defendants have not even had an opportunity as yet to depose the plaintiff. Indeed, by our December 29 Memorandum and Order we granted defendant's request to depose the currently incarcerated plaintiff and extended the discovery deadline to permit that deposition to be scheduled and conducted.

Under the circumstances, we recommend that plaintiff's motion for summary judgment be denied without prejudice to refiling at the conclusion of discovery, which is now scheduled for February 1, 2009.

CONCLUSION

For the reasons stated, we recommend that plaintiff's motion for a default judgment and summary judgment be denied.

Pursuant to Rule 72 of the Federal Rules of Civil Procedure, the parties shall have ten (10) days from this date to file written objections to this Report and Recommendation. Such objections shall be filed with the Clerk of the Court and served on all adversaries, with extra copies to be delivered to the chambers of the Honorable Loretta A. Preska, Room 1320, 500 Pearl Street, New York, New York

10007, and to the chambers of the undersigned, Room 1670, 500 Pearl Street, New York, New York 10007. Failure to file timely objections may constitute a waiver of those objections both in the District Court and on later appeal to the United States Court of Appeals. See Thomas v. Arn, 470 U.S. 140, 150 (1985); Small v. Secretary of Health and Human Services, 892 F.2d 15, 16 (2d Cir. 1989); 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72, 6(a), 6(e).

Dated: New York, New York
December 29, 2008



MICHAEL H. DOLINGER
UNITED STATES MAGISTRATE JUDGE

Copies of the foregoing Report and Recommendation have been mailed today to:

Mr. Raheem Davis
58146-054
United States Penitentiary
P.O. Box 1000
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